

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 INTERNATIONAL NEWS, INC.,

11 Plaintiff, CASE NO. C18-0302-JCC
12 v.
13 10 DEEP CLOTHING, INC.,
14 Defendant.

ORDER

15 Pursuant to the parties' stipulated motion for protective order (Dkt. No. 26), the Court
16 ORDERS as follows:

17 **1. PURPOSES AND LIMITATIONS**

18 Discovery in this action is likely to involve production of confidential, proprietary, or
19 private information for which special protection may be warranted. Accordingly, the parties hereby
20 stipulate to and petition the Court to enter the following stipulated Protective Order. The parties
21 acknowledge that this Protective Order is consistent with Local Civil Rule 26(c). It does not confer
22 blanket protection on all disclosures or responses to discovery, the protection it affords from public
23 disclosure and use extends only to the limited information or items that are entitled to confidential
24 treatment under the applicable legal principles, and it does not presumptively entitle the parties to
25 file confidential information under seal.

1 **2. MATERIAL DESIGNATED “CONFIDENTIAL” OR “CONFIDENTIAL – FOR**
2 **COUNSEL ONLY”**

3 Any party to this litigation that produces or discloses any materials, answers to
4 interrogatories, responses to requests for admission, trial testimony, deposition testimony, and
5 transcripts of trial testimony and depositions, or information including documents, or portion of
6 any document produced or prepared by it in this litigation which the producing party deems to
7 contain trade secrets, know-how, proprietary data, commercially sensitive, or other confidential
8 information, including without limitation technical, sales, marketing, underwriting, employee,
9 business, financial, privacy, and other proprietary information that the producing party believes
10 should be subject to this Protective Order, may designate the same as “CONFIDENTIAL” or
11 “CONFIDENTIAL – FOR COUNSEL ONLY.”

12 **2.1 Designation as “CONFIDENTIAL”:** Any party may designate information as
13 “CONFIDENTIAL” only if, in the good faith belief of such party and its counsel, the unrestricted
14 disclosure of such information could be harmful to the business or operations of such party.

15 **2.2 Designation as “CONFIDENTIAL – FOR COUNSEL ONLY”:** Any party may
16 designate information as “CONFIDENTIAL – FOR COUNSEL ONLY” only if, in the good faith
17 belief of such party and its counsel, the information contains or discloses material of an extremely
18 high degree of current commercial sensitivity that would provide a competitive advantage if
19 disclosed to any other party or third party, including but not limited to trade secrets, know-how,
20 proprietary data, commercially sensitive, or other confidential information, including without
21 limitation, technical, sales, marketing, underwriting, employee, business, financial, privacy, and
22 other proprietary information.

23 **3. SCOPE**

24 The protections conferred by this Protective Order cover not only confidential material (as
25 defined above), but also (1) any information copied or extracted from confidential material; (2) all
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1 copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
2 conversations, or presentations by parties or their counsel that might reveal confidential material.

3 However, the protections conferred by this Protective Order do not cover information that
4 is in the public domain or becomes part of the public domain through trial or otherwise.

5 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

6 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
7 or produced by another party or by a non-party in connection with this case only for prosecuting,
8 defending, or attempting to settle this litigation. Confidential material may be disclosed only to the
9 categories of persons and under the conditions described in this Protective Order. Confidential
10 material must be stored and maintained by a receiving party at a location and in a secure manner
11 that ensures that access is limited to the persons authorized under this Protective Order.

12 4.2 Disclosure of Information or Items designated “CONFIDENTIAL” or
13 “CONFIDENTIAL – FOR COUNSEL ONLY.” Unless otherwise ordered by the Court or
14 permitted in writing by the designating party, a receiving party may disclose any confidential
15 material only to:

16 (a) the receiving party’s counsel of record in this action, as well as employees
17 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

18 (b) the officers, directors, and employees (including in-house counsel) of the
19 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
20 agree that a particular document or material produced is “CONFIDENTIAL – FOR COUNSEL
21 ONLY” and is so designated;

22 (c) experts and consultants to whom disclosure is reasonably necessary for this
23 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

24 (d) the Court, court personnel, and court reporters and their staff;

25 (e) copy or imaging services retained by counsel to assist in the duplication of
26 confidential material, provided that counsel for the party retaining the copy or imaging service

1 instructs the service not to disclose any confidential material to third parties and to immediately
2 return all originals and copies of any confidential material;

3 (f) during their depositions, witnesses in the action to whom disclosure is
4 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
5 (Exhibit A), unless otherwise agreed by the designating party or ordered by the Court. Pages of
6 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
7 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
8 under this Protective Order;

9 (g) the author or recipient of a document containing the information or a
10 custodian or other person who otherwise possessed or knew the information.

11 4.3 Filing Material Designated "CONFIDENTIAL" or "CONFIDENTIAL – FOR
12 COUNSEL ONLY." Before filing material designated "CONFIDENTIAL" or "CONFIDENTIAL
13 – FOR COUNSEL ONLY," or discussing or referencing such material in court filings, the filing
14 party shall confer with the designating party to determine whether the designating party will
15 remove the "CONFIDENTIAL" or "CONFIDENTIAL – FOR COUNSEL ONLY" designation,
16 whether the document can be redacted, or whether a motion to seal or stipulation and proposed
17 order is warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the
18 standards that will be applied when a party seeks permission from the Court to file material under
19 seal.

20 **5. DESIGNATING PROTECTED MATERIAL**

21 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
22 or non-party that designates information or items for protection under this Protective Order must
23 take care to limit any such designation to specific material that qualifies under the appropriate
24 standards. The designating party must designate for protection only those parts of material,
25 documents, items, or oral or written communications that qualify, so that other portions of the

1 material, documents, items, or communications for which protection is not warranted are not swept
2 unjustifiably within the ambit of this Protective Order.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
4 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
5 unnecessarily encumber or delay the case development process or to impose unnecessary expenses
6 and burdens on other parties) expose the designating party to sanctions.

7 If it comes to a designating party's attention that information or items that it designated for
8 protection do not qualify for protection, the designating party must promptly notify all other parties
9 that it is withdrawing the mistaken designation.

10 5.2 Manner and Timing of Designations. Except as otherwise provided in this
11 Protective Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated
12 or ordered, disclosure or discovery material that qualifies for protection under this Protective Order
13 must be clearly so designated before or when the material is disclosed or produced.

14 (a) Information in documentary form: (e.g., paper or electronic documents and
15 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
16 the designating party must affix the word "CONFIDENTIAL" or "CONFIDENTIAL – FOR
17 COUNSEL ONLY" to each page that contains confidential material. If only a portion or portions
18 of the material on a page qualifies for protection, the producing party also must clearly identify
19 the protected portion(s) (e.g., by making appropriate markings in the margins).

20 (b) Testimony given in deposition or in other pretrial proceedings: the parties
21 and any participating non-parties must identify on the record, during the deposition or other pretrial
22 proceeding, all protected testimony, without prejudice to their right to so designate other testimony
23 after reviewing the transcript. Any party or non-party may, within 15 days after receiving the
24 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or
25 exhibits thereto, as confidential. If a party or non-party desires to protect confidential information
26 at trial, the issue should be addressed during the pre-trial conference.

(c) Other tangible items: the producing party must affix in a prominent place on the exterior of the container or containers in which the information or item is stored the word “CONFIDENTIAL” or “CONFIDENTIAL – FOR COUNSEL ONLY.” If only a portion or portions of the information or item warrant protection, the producing party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the designating party's right to secure protection under this Protective Order for such material. Upon timely correction of a designation, the receiving party must make reasonable efforts to ensure that the material is treated in accordance with the provisions of this Protective Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any party or non-party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The parties must make every attempt to resolve any dispute regarding confidential designations without court involvement. Any motion regarding confidential designations or for a protective order must include a certification, in the motion or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer conference with other affected parties in an effort to resolve the dispute without court action. The certification must list the date, manner, and participants to the conference. A good faith effort to confer requires a face-to-face meeting or a telephone conference.

6.3 Judicial Intervention. If the parties cannot resolve a challenge without Court intervention, the designating party may file and serve a motion to retain confidentiality under Local

1 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
2 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
3 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
4 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain
5 the material in question as confidential until the Court rules on the challenge.

6 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
7 OTHER LITIGATION**

8 If a party is served with a subpoena or a court order issued in other litigation that compels
9 disclosure of any information or items designated in this action as “CONFIDENTIAL” or
10 “CONFIDENTIAL – FOR COUNSEL ONLY,” that party must:

11 (a) promptly notify the designating party in writing and include a copy of the
12 subpoena or court order;

13 (b) promptly notify in writing the party who caused the subpoena or order to
14 issue in the other litigation that some or all of the material covered by the subpoena or order is
15 subject to this Protective Order. Such notification shall include a copy of this Protective Order;
16 and

17 (c) cooperate with respect to all reasonable procedures sought to be pursued by
18 the designating party whose confidential material may be affected.

19 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

20 If a receiving party learns that, by inadvertence or otherwise, it has disclosed material
21 designated “CONFIDENTIAL” or “CONFIDENTIAL – FOR COUNSEL ONLY,” to any person
22 or in any circumstance not authorized under this Protective Order, the receiving party must
23 immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its
24 best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or
25 persons to whom unauthorized disclosures were made of all the terms of this Protective Order, and
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1 (d) request that such person or persons execute the "Acknowledgment and Agreement to Be
2 Bound" that is attached hereto as Exhibit A.

3 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
4 PROTECTED MATERIAL**

5 When a producing party gives notice to receiving parties that certain inadvertently
6 produced material is subject to a claim of privilege or other protection, the obligations of the
7 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
8 is not intended to modify whatever procedure may be established in an e-discovery order or
9 agreement that provides for production without prior privilege review. The parties agree to the
10 entry of a non-waiver order under Federal Rule of Evidence 502(d) as set forth herein.

11 **10. NON TERMINATION AND RETURN OF DOCUMENTS**

12 Within 60 days after the termination of this action, including all appeals, each receiving
13 party must return all confidential material to the producing party, including all copies, extracts and
14 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

15 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
16 documents filed with the Court, trial, deposition, and hearing transcripts, correspondence,
17 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
18 product, even if such materials contain confidential material.

19 The confidentiality obligations imposed by this Protective Order shall remain in effect until
20 a designating party agrees otherwise in writing or a court orders otherwise.

21 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

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1 Dated this 15th day of November, 2018

2 /s/ J. Derek Little

3 J. Derek Little, WSBA # 40560

4 Karr Tuttle Campbell

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10 *Attorneys for Plaintiff / Counterclaim*

11 *Defendant*

12 Dated this 15th day of November, 2018.

13 s/Taylor Widawski

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23 *Attorneys for Defendant / Counterclaim*

24 *Plaintiff*

25 PURSUANT TO STIPULATION, IT IS SO ORDERED.

26 IT IS FURTHER ORDERED that pursuant to Federal Rule of Evidence 502(d), the
1 production of any documents in this proceeding shall not, for the purposes of this proceeding or
2 any other proceeding in any other court, constitute a waiver by the producing party of any
3 privilege applicable to those documents, including the attorney-client privilege, attorney work-
4 product protection, or any other privilege or protection recognized by law.

5 DATED this 26th day of November 2018.

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John C. Coughenour
UNITED STATES DISTRICT JUDGE

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Protective Order that was issued by the United States District Court for the Western District of Washington on [date] in the case of *International News Inc. v. 10 Deep Clothing, Inc.*, Case No. 18-0302-JCC (W.D. Wash. 2018). I agree to comply with and to be bound by all the terms of this Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Protective Order to any person or entity except in strict compliance with the provisions of this Protective Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____